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C O N F I D E N T I A L SECTION 01 OF 03 HARARE 001080

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STATE PASS TO USAID FOR E. LOKEN AND L. DOBBINS
STATE PASS TO NSC FOR SENIOR AFRICA DIRECTOR B. PITTMAN

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TAGS: [PREL](#) [PGOV](#) [ASEC](#) [ZI](#)
SUBJECT: SADC TALKS ENTER FINAL PHASE

Classified By: Pol/Econ Chief Glenn Warren. Reason: 1.4 (d)

Summary

11. (SBU) MDC negotiators Tendai Biti and Welshman Ncube told diplomats December 4 that the final phase of SADC-sponsored negotiations will take place in South Africa between December 5 and December 10. Agreement has been reached on a draft constitution, a new electoral law, reform of POSA, and reform of media laws. In South Africa, negotiators will address the political environment, and the potentially deal-breaking transitional issues of timing of implementation of the new constitution and date of the election. Noting gains on paper, the negotiators said that critical to success on the ground would be a "paradigm shift" by Mugabe, supporting a changed political environment to allow implementation of an agreement.

12. (SBU) On the role of the international community, the negotiators acknowledged the importance of observers. Since the invitation to non-Zimbabweans is a sovereign decision, they hoped this would be part of the agreement. On sanctions, they opined that the international community should await the outcome of the SADC process--maintaining existing policies, but not ratcheting up pressure. End Summary.

Progress to Date--Constitution, Electoral Law, POSA, AIPPA

13. (SBU) The MDC negotiators said negotiations would resume on December 5 with a deadline for an agreement of December 10. If an agreement were reached, it would need to be ratified by the executive committees of the respective sides. This would presumably occur by December 15. (Note. The EU-AU Summit takes place on December 9-December 10, the ZNU-PF Congress is scheduled for December 11-December 14, and

the ANC National Congress is scheduled for December 15-December 20. End Note.)

¶4. (SBU) According to Biti, although ZANU-PF had initially argued for amending the current constitution, agreement had been reached on a new draft constitution that contained a bill of rights, oversight committees, and a new electoral framework. Subsequently, a new Electoral Act had been introduced in Parliament, concretizing what had been agreed to in the constitution. This included continuous voter registration and inspection of voters' rolls, access of all parties to public broadcasting, ability of anyone or group--not just the Zimbabwe Electoral Commission (ZEC)--to do voter education, and restriction of the use of security forces in the electoral process. Biti noted that agreement had not been reached on whether the current ZEC should continue the ongoing voter registration process and constituency delimitation exercise, or whether these should await the reconstitution of the ZEC (with new membership) under the new constitution.

¶5. (SBU) Biti said the parties had agreed to modify POSA, based on the South African model. Authorization for meetings would still be necessary (impossible, he said, to avoid in a post-9-11 world), but regulators would have to justify denials, which would be the rare case. In the event of denial, appeal would be to the courts rather than a minister.

¶6. (SBU) Finally, Biti said there was an agreement to reform AIPPA to remove restrictive accreditation requirements. Under the proposed AIPPA, journalists would not have to be accredited. Accreditation would confer certain privileges,

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such as sitting in Parliament and gaining access to government-held information.

Unresolved Violence

¶7. (SBU) According to the MDC negotiators, the principal unresolved issue was the political atmosphere. On September 30, ZANU-PF negotiators had promised that the party would engage its structures and those of the government to stop violence and permit opposition meetings. The South African mediators had stressed the importance of this. Two months later, despite continuing negotiations and progress on paper, violence had continued.

¶8. (SBU) Biti and Ncube both stressed that a "paradigm shift" had to take place, directed by Mugabe. Mugabe had to indicate by his "body language"--the signals that he sends to his party structures--that he wanted a change on the ground; otherwise the progress at the negotiating table would not ensure free and fair elections.

Outstanding Substantive Issues

¶9. (SBU) In addition to the overall issue of violence, the MDC had placed on the agenda the following issues which had not yet been discussed and/or resolved: militarization of the state (increasing role of security forces in traditional government functions such as distribution of food and elections), coopting by the government of traditional leaders to carry out its objectives, manipulation of food aid whereby ZANU-PF membership is sometimes necessary to obtain food assistance, and the role of security forces such as "green bombers" or youths who extra-officially intimidate the opposition and its supporters.

¶10. (SBU) Issues tabled by ZANU-PF included sanctions, land, "pirate" or off-shore radio such as VOA, recognition by the opposition of national days, and opposition recognition of

the 2002 election results and Mugabe's reelection as president.

Transitional Issues--Deal Breakers?

¶11. (SBU) Biti said that in exchange for support on Amendment 18, the MDC was assured a new constitution would be negotiated and put in place before elections. He and Ncube said ZANU-PF was backing away from this, indicating a new constitution should take effect after elections. The MDC negotiators had received criticism--much of it justified--from civil society for agreeing to Amendment 18 and negotiating a new constitution without input from civil society. It was now important, they said, to allow civil society to weigh in on the constitution and to implement it before elections. ZANU-PF intransigence on this could be a deal breaker.

¶12. (SBU) The date of the elections was also a potential deal breaker according to the negotiators. Time was needed to adequately conduct delimitation of parliamentary constituencies, accomplish a fresh voter registration, and allow free campaigning. The MDC was not yet suggesting a date--this should be determined by the time necessary to implement an agreement-- but March might be too early.

Role of the International Community

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¶13. (SBU) Asked about the role of the international community, Ncube said it should for now stand still and await the outcome of the negotiations. It should wholeheartedly support the SADC process--"that's all we have" at this point in time. While existing pressures should be maintained, they should not be increased.

¶14. (SBU) With regard to elections, Ncube said that international observation would be important. Invitations to observers was a sovereign decision; therefore, as a matter of law, the MDC could not compel the GOZ to accept observers. He hoped that provision for them would be negotiated as part of an agreement. In any event, observers could apply to the ZEC for authorization. Since this would be a transparent process, it would be clear if the GOZ denied observation status to interested individuals and groups.

Comment

¶15. (C) As Biti and Ncube prepared to return to South Africa for a conclusion to the talks, they seemed pessimistic about an overall result that would lead to free and fair elections.

As they acknowledged, in exchange for concessions on Amendment 18, they had not yet received what they needed most: implementation of a new constitution before elections, an improved political environment, and a reasonable election date. The MDC seems to be looking toward the future, after Mugabe is presumably reelected. As Ncube said, the MDC did not want to insist on all or nothing in the current negotiations. It will take what it can out of the SADC process, eg., a new constitution, a new electoral law, and reforms to repressive legislation, hoping to lay the political and legal framework for the post-Mugabe era. If an agreement is reached and substantially implemented, so much the better, but nobody for the moment seems to be counting on this.

MCCEE